

SUBCHAPTER C : TYPES OF USES

§§297.21-297.30

Effective June 28, 1996

§297.21. Direct Diversion.

A permit under Texas Water Code, §11.121, for direct diversion is required of all persons who propose to divert state water from a watercourse or its underflow, unless the water is to be used for domestic and livestock uses. Manner of diversion may be by pumping or by gravity flow.

§297.22. Diversion from a Reservoir.

A permit for diversion is required of all persons who propose to divert state water from a reservoir and apply it to an authorized use except as provided by Texas Water Code, §11.142. The manner of diversion may be by pumping or by gravity flow. (Although a person may hold a valid permit for a reservoir or storage facility, water cannot be diverted and used from the reservoir unless the permit so authorizes.)

§297.23. On-Channel Reservoir.

Except as provided by Texas Water Code, §11.142, a permit is required for a dam and/or a reservoir on a watercourse, except for a natural reservoir or lake. The permit will authorize the appropriation of state water to fill the reservoir, divert and use the water or use the water in place.

§297.24. Off-Channel Reservoir.

Except as provided by Texas Water Code, §11.142, a permit is required for an impounding structure that is not directly on a watercourse, if the reservoir is to impound state water and the commission deems that the impoundment is necessary to grant authorization to divert and use state water. The permit will authorize the appropriation of state water to fill the reservoir, divert and use the water, or use the water in place. This definition does not include in-system balancing reservoirs operating under authorized permits.

§297.25. Storage in Another's Reservoir.

A permit is required to appropriate state water for storage in another's lawful reservoir and to divert and use water therefrom. Consent of the reservoir owner must be obtained. If the reservoir is a project of the Soil Conservation Service, U. S. Department of Agriculture, consent must be obtained from the Soil and Water Conservation District and any others having jurisdiction over the reservoir before a permit can be acquired.

§297.26. Spreader Dams, Contouring, Terracing.

No permit shall be required to construct or maintain any system of contouring, terracing, spreader dams or other such practices designed to make maximum beneficial use of diffused surface water and overbank flooding and to implement any generally accepted conservation practices necessary to prevent or reduce erosion on one's own property.

§297.27. Permit Exemption for Mariculture Activities.

(a) Without obtaining a permit from the commission, a person engaged in mariculture activities on land may take an appropriate amount of water from the Gulf of Mexico or adjacent bays and arms of the Gulf of Mexico for that purpose if:

(1) prior to the first taking of water, the person gives notice to the commission of the proposed appropriation including:

- (A) the name and address of the person(s);
- (B) the location of the project;
- (C) the name of the water source;
- (D) the maximum annual amount of water to be appropriated; and
- (E) the month and year of the first appropriation.

(2) The person submits annual water use reports as required by 295.202 of this title (relating to Reports).

(b) After notice and hearing, if the commission determines that as a result of low freshwater inflows appropriations under subsection (a) of this section are interfering with natural productivity of bays and estuaries, the commission shall issue an order requiring interruption or reduction of these appropriations.

§297.28. Permit Exemption for Drilling and Producing of Petroleum.

Without obtaining a water use permit from the commission, a person engaged in drilling for petroleum, or producing petroleum, may take for those purposes not to exceed one acre-foot of water per 24-hour period from the Gulf of Mexico or from the adjacent bays and arms of the Gulf of Mexico. A person using water for such purposes is not required to file water use reports.

§297.29. Permit Exemption to Use State Water for Emergency Use.

Without obtaining a permit from the commission, county and rural community fire departments and other emergency service providers may divert and use state water from streams and reservoirs, including exempt domestic and livestock reservoirs for emergency purposes. Emergency purposes under this rule include use of water to fight fires, manage chemical spills, and as needed to deal with emergency public welfare concerns. Emergency purposes does not include domestic, livestock or other purposes defined by §297.1 of this title (relating to Definitions). Rural emergency service providers (entities) may also establish "Dry Hydrant" installations in streams and reservoirs, including exempt reservoirs. Dry hydrant installations shall be exempt from permitting requirements provided that:

(1) Hydrant locations are identified and documented by the installing entities and the entities file these identification codes and location descriptions with the executive director within 120 days after completion of an installation;

(2) Facilities installed before the adoption of this rule are documented within six months after the rule is adopted;

(3) Ingress and egress authorizations are obtained from private property owners and/or public entities on whose property the installations are located;

(4) Installations conform to design and installation requirements and guidelines recommended by the USDA Soil Conservation Service; and

(5) Diversions from dry hydrant installations are reported to the executive director by the using entities within sixty (60) days of use. Pump testing of facilities is not required to be reported.

(A) Local offices of the USDA Soil Conservation Service can provide technical assistance and recommendations for installation of dry hydrant facilities.

(B) Hydrant facilities which do not meet the above minimum requirements must be authorized by Water Code 11.121 permits granted by the commission.

§297.30. Permit Exemptions for Use of State Water for Irrigation of Certain Historic Cemeteries and for Sedimentation Control Structures within Surface Coal Mining Operations.

(a) Permit Exemption for Use of State Water for Irrigation of Certain Historic Cemeteries.

(1) Without obtaining a water use permit from the commission, a tax-exempt non-profit corporation that owns a cemetery may divert from a stream not more than 200 acre-feet of water each year to irrigate the grounds of the cemetery if the cemetery:

(A) borders the stream; and

(B) is more than 100 years old.

(2) If the executive director, or a watermaster who has jurisdiction over the stream from which a cemetery diverts water under this section, determines that the diversion will harm a person downstream of the cemetery who acquired a water right before May 23, 1995, the executive director or the watermaster may order the cemetery to restrict the diversion to the extent and duration of the harm. The executive director may also request appropriate commission action.

(3) Any person dissatisfied with the action taken by the executive director or the watermaster pursuant to paragraph (2) of this subsection may appeal to the commission for relief.

(b) Permit Exemption to Use State Water for Sedimentation Control Purposes within a Surface Coal Mining Operation. Without obtaining a permit from the commission, a person may construct or maintain a reservoir for the sole purpose of sedimentation control as part of a surface coal mining operation under the Texas Surface Coal Mining and Reclamation Act (Art. 5920-11, Vernon's Texas Civil Statutes).

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